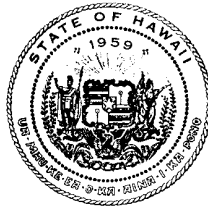


NEIL ABERCROMBIE  
GOVERNOR



Dwight Takamine  
DIRECTOR

Audrey Hidano  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**Hoisting Machine Operators Advisory Board**  
830 Punchbowl Street  
Honolulu, Hawaii 96813  
PH: (808) 586-9011 Fax: (808) 586-9104

Board Members  
Tom Vendetta, Chair  
Joaquin Diaz  
Ed Sanchez  
Jim Weander

Lora Contreras,  
Executive Director

***Approved 11/16/11***

Hoisting Machine Operator's Advisory Board Minutes  
Wednesday, September 21 2011  
1:30 p.m.  
Department of Labor & Industrial Relations Office  
HIOSH Training Room  
830 Punchbowl Street #425  
Honolulu, Hawaii 96813

**Present:** Tom Vendetta, Ed Sanchez, Jim Weander, and Lora Contreras.

Not Present : Joaquin Diaz

Guests: Pane Meatoga, Local 3 State Administrator, Jennifer Shishido, DLIR HIOSH Administrator, Doreen Miyake, DLIR.

### **Call to order**

Chair Vendetta established a quorum and called the meeting to order at 1:30 p.m.

### **Minutes of June 29, 2011**

Ed Sanchez moved, seconded by Jim Weander to approve the minutes as circulated. Minutes approved.

### **Director's Report**

### **HIOSH Compliance Branch Report**

No citations issued this month.

### **Old Business – Federal OSHA Guidelines**

The Board's recommendations for changes to the administrative rules (below) were made to be in compliance with the new federal OSHA guidelines being adopted by HIOSH. HIOSH and Board members will review the proposed changes and provide comments or suggested revisions at the next board meeting. If the Board approves of these changes, they will be included in the HIOSH process for amending Chapter 48 (public hearings, etc.).

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to Chapter 12-48

Hawaii Administrative Rules

1. Sections 12-48, Hawaii Administrative Rules, is amended to read as follows:

§12-48-1 Purpose

§12-48-2 Scope

§12-48-3 Definitions

§12-48-4 Hoisting machine operators' advisory board

§12-48-5 Certificate required

§12-48-6 Application process

§12-48-7 Special certification (Repealed)

§12-48-8 Renewals

§12-48-9 Denials, suspensions, and revocations

§12-48-10 Appeals process

§12-48-11 Fees

§12-48-1 Purpose. This chapter implements section 396-19, Hawaii Revised Statutes, and promulgates rules for the certification of hoisting machine operators. The provisions of this chapter shall apply to any person [or persons] who acts as a hoisting machine operator. [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-2 Scope. Certification of hoisting machine operators is limited to operators of power-operated equipment covered by Section 1926.1400, 29 Code Federal Regulations (CFR) and meeting operator qualification and certification requirements under Section 1926.1427, 29 CFR. [ASME B30.5 and which has a lifting capacity of more than five tons and who performs construction work as defined by section 12-50-2, Hawaii Administrative Rules.] [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-3 Definitions. As used in this chapter:

"ASME B30.3" means ASME B30.3-1996, American Society of Mechanical Engineers Safety Standards

"ASME B30.5" means ASME B30.5-2000, American Society of Mechanical Engineers Safety Standards, which also includes the Addenda ASME B30.5a-2002.

"Board" means the hoisting machine operators' advisory board.

"Certificate" means any hoisting machine operator certificate, or renewal certificate issued by the director authorizing a person to operate a hoisting machine.

"Certified operator" means a person with a current and valid certificate, or renewal certificate issued by the director to operate a hoisting machine.

"Department" means the department of labor and industrial relations, State of Hawaii.

["Direct supervision" means that a certified hoisting machine operator is visible to the operator of the hoisting machine or in voice contact with the operator at the site where the work is being performed.]

"Director" means the director of the department of labor and industrial relations or the director's designee.

"DOT" means [state] State of Hawaii, department of transportation.

"NCCCO" means National Commission for the Certification of Crane Operators.

"Non-certified operator" means any person who operates a hoisting machine without a valid and current certificate issued by the director.

"State" means State of Hawaii. [ [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)]

§12-48-4 Hoisting machine operators' advisory board. The board shall be composed of five members from both organized labor and management employers. The members are to serve without compensation and without reimbursement for expenses. Members shall be appointed by the governor and may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, for carrying out the purposes of the hoisting machine operators' advisory board.[Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-5 Certificate required. (a) No person shall operate a hoisting machine [in the State without a current State issued hoisting machine operator] covered by this chapter without a current certificate except as identified in this [section.] chapter.

(b) [Each hoisting machine operator] Any person who operates a hoisting machine shall have and carry a current and [in their possession a] valid certificate [during the operation of] while operating a hoisting machine.

(c) An operator must have a current physical examination certificate as required in section 12-48-6(b) at all times. Such proof, must be submitted upon request to the director within two hours of request.

[(d) A hoisting machine operator certificate is not required for operator assistants, apprentices, oilers, assistants to the engineers, and trainees, provided they are under the direct supervision of a certified hoisting machine operator at all times while operating a hoisting machine and they meet the training requirements of ASME B30.5.

(e) A hoisting machine operator certificate is not required for persons performing maintenance or inspection work.] [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-6 Application process. (a) An applicant for a [hoisting machine operator] certificate shall be at least twenty-one years of age at the time of application and provide proof of age by submitting a valid original of any two of the following for the purpose of photocopying:

- (1) Birth certificate;
- (2) Driver's license;
- (3) Passport; or
- (4) Hawaii State ID.

(b) An applicant must have passed a physical examination that meets the requirements of ASME B30.3, Section 3-3.1.2 (b) and ASME B30.5, Section 5-3.1.2(a), and provide  
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evidence of such examination by submitting a complete and current copy of one of the following:

(1) NCCCO medical examiner's certificate; or

(2) A DOT certificate of medical examination.

(c) At the time of application, an applicant must provide a current NCCCO certificate or an equivalent form of certification [that is accepted by the board that possesses] showing the applicant has hoisting machine operation experience as required for the NCCCO written exam. A copy of the NCCCO experience form is acceptable.

(d) Applications shall be submitted on forms provided by the director. A completed application shall consist of the form provided by the director that is completely answered by the applicant, an [the] application fee, and all supporting documents required in subsections (a) through (c). [, unless applying for a special certification, in which case section 12-48-7(b) applies in lieu of subsection (c).] A completed application shall be submitted to the director.

(e) The director shall notify the applicant whether the application was approved or disapproved within sixty calendar days of receipt of a completed application. Approved applicants must submit the required certification fee within thirty calendar days of receiving notice of approval or must re-apply. The director shall issue the state hoisting machine operator certificate within thirty days of receipt of the certification fee.

(f) For initial applications only, [the state] a certificate shall be valid for the balance of any current NCCCO certification or other equivalent board-accepted certification plus the term of any approved renewal NCCCO certification or its equivalent board-accepted certification. [The] An applicant must submit proof of such approved NCCCO certification or renewal or its equivalent board-accepted certification or renewal at the time the application fee is submitted.

[Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

[§12-48-7 Special certification. (a) A special certificate is available for an applicant who cannot meet the requirements identified in section 12-48-6(c) and the applicant works for only one employer and operates only specific hoisting machines as identified by the applicant's employer.

(b) At the time of application, the applicant's employer must certify in writing to the director that it has provided operator training to the applicant that meets the training qualifications of ASME B30.5 for the specific hoisting machine or machines identified in the application. The applicant must comply with sections 12-48-6(a), (b), and (d).

(c) A special certificate is valid for two years or until the holder terminates employment with the employer, whichever comes sooner. A special certificate is not renewable and is valid for only those hoisting machines specifically identified on the certificate.

(d) A special certificate is nontransferable. A special certificate shall be issued only once to an operator.

[Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)]

§12-48-8 Renewals. (a) Applications [for renewal of hoisting machine operator certificates] to renew a certificate shall be made on forms provided by the director and must be submitted to the director with a nonrefundable renewal fee. Renewal applications must be submitted with the required documents and forms identified in sections 12-48-6 (b) and (c).

(b) [The] An application for renewal must be filed with the director no later than ninety days after [the expiration of the] a current certificate expires. Renewals will be granted or denied within sixty days of [the] receipt of a complete renewal application as defined in [subsection (a)] section 12-48-6 (d). An application for renewal filed more than ninety days after a current certificate expires, shall be considered a new application.

(c) [If an application for renewal is filed ninety-one days or more after the expiration of the current certificate, it shall be considered a new application.] A renewal certificate shall be valid for the balance of the NCCCO certification or other equivalent certification approved by the board, but shall not exceed five years.

[(d) State-issued renewal certifications shall be valid for the balance of the NCCCO certification or other equivalent certification that is accepted by the board, but not to exceed five years.] [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-9 Denials, suspensions, and revocations. (a) The director may deny, suspend, or revoke [the] a certificate or deny the issuance or renewal of a certificate [of a holder] for any of [these] the following reasons:

(1) A violation of 29 CFR Part 1926, ASME B30.3 or ASME B30.5;

(2) Non-compliance with an order of the director within the time specified in the order;

(3) [Proof that the applicant or holder has been convicted of a crime directly related to the applicant's possible performance under the certificate applied for and where the applicant has not been sufficiently rehabilitated to warrant the public trust;] Conviction of a crime directly related to the safe operation of a hoisting machine where an applicant or certified operator has not been sufficiently rehabilitated;

(4) [Proof that the applicant or holder suffers from a mental or physical defect that would interfere with or prevent the applicant's safe handling of a] A mental or physical defect that causes an inability to safely operate a hoisting machine;

(5) Providing false information or making any misrepresentation [for the purpose of obtaining] to obtain a certificate;

(6) [The applicant or holder is an unlawful user of narcotics or dangerous drugs;] Habitual intoxication, addiction to or the unlawful use of narcotics, or the use of any drugs or medications that could impair an operator's ability to safely operate a hoisting machine;

(7) [A finding that the certificate holder was responsible or contributed to an accident involving a hoisting machine; or] An accident involving a hoisting machine operated by the person applying for or seeking to renew a certificate; or

(8) For any other reason, which ~~at~~ in the discretion of the director, would create a hazard or risk to persons or property.

(b) Operation of a hoisting machine in violation of [ASME B30.5,] this chapter, may result in the revocation of a certificate or the suspension of [certification] a certificate for not less than twenty-four hours [and] but not more than one year. [, or revocation of certification.]

(c) If the director [makes a finding] finds [that] an accident was caused by the actions or omissions of a certified operator and [the director] suspends or revokes the [holder's] certified operator's certificate, the director may require the [certificate

holder] certified operator to retake and pass [the] a certification examination before applying to have his or her [certification] certificate reinstated.

(d) A person whose certificate has been revoked may apply for certification not less than one year after the date of revocation. [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-10 Appeals process. (a) Any denial, revocation, or suspension shall be final and conclusive against [the] an applicant or [holder] certified operator unless a written notice of contest is filed with the director. The written notice of contest shall be an original, served on the director, and must be postmarked, or if not mailed, received and filed by the director within twenty calendar days of the denial, revocation, or suspension.

(b) The [department] director shall hold [the appeals] a hearing within thirty calendar days [of receipt of the written request] after receiving a timely notice of contest. The [reconsideration] hearing shall be de novo and [its] all findings and conclusions by the director may be contested on the record only to the [h] Hawaii labor relations board.

(c) The applicant or [holder] certified operator may request an informal conference to discuss [the] a denial, revocation, or suspension, but [the] an informal conference shall not suspend or change the twenty-day deadline for filing [requirement for the] a notice of contest.

(d) [Upon notice of revocation of a state hoisting machine operator certificate, the operator shall immediately surrender to the department the revoked state hoisting machine operator certificate.] A certified operator whose certificate is revoked shall, upon receiving notice of the revocation, immediately surrender the certificate to the department. [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-11 Fees. (a)[The] An applicant shall submit [the] a completed application to the director with a \$50 application fee.

(b) [After the applicant is notified of approval, the applicant shall remit a \$500 certification fee within thirty calendar days to the director. For certification periods of less than five years, the fee is prorated to a year or portion of one year or a fraction of one year is \$100.] Upon receiving notice that an application has been approved, an applicant shall remit a \$500 certification fee to the director within thirty calendar days. For certification periods of less than five years, the certification fee for each year or portion of a year shall be \$100.

[(c) Upon approval for a special certificate, the applicant shall remit a \$300 fee to the director within thirty calendar days to the director.]

[(d)] (c) Renewal applications shall be submitted to the director and accompanied with [the] a renewal fee of \$500.

[(e)] (d) All application and certification fees[are] shall be non-refundable. [Eff 12/6/02] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

## **Community Concerns**

Pane Meatoga asked if the HMOAB would continue operating and advising DLIR. Chair Vendetta responded that the legislature determines the board existence. Jennifer Shishido agreed that the experience and knowledge the board brings to the department is valuable.

## **Announcements**

Next board meeting – Wednesday, October 19, 2011 at 1:30 p.m.

## **Adjournment**

Meeting adjourned at 2:20 p.m.